

Date of decision: 19.4.1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J  
(19-4-1996)

Ms. Sangita Pahwa for the petitioner.  
Ms. Mamta Vyas for respondents.

ORAL JUDGMENT:

Rule. Ms. Mamta Vyas waives service of rule. With the consent of the parties the matter is taken up for final

hearing.

2. The petitioners were appointed admittedly as daily wagers on 11-11-1980 23-4-1982 and 23-6-1982 respectively on the post of watchman, helper and driver in the office of respondent. The services of the petitioners were terminated by the respondent on 31st May, 1983. This termination of services had given rise to special civil application No.6112 of 1984. That petition was accepted by this court on 3-2-1994, and the Court ordered reinstatement of the petitioners and to pay them 50% backwages. Against the said judgment, the respondents preferred letters patent appeal No.415 of 1994. In the L.P.A. notice was issued and interim orders were passed to the extent that the judgment of the learned single Judge was stayed so far as the payment of backwages was concerned. The petitioners were reinstated in service by the respondents as watchman, driver and helper on 7-3-1994. They were reinstated in the regular pay-scales of the respective posts. Having the apprehension that the respondent Panchayat has decided to terminate the regular employment of the petitioners, i.e. their reinstatement in regular pay-scale, and to place them as daily wagers, the present writ petition has been filed.

3. The petitioners have come up with the case that the aforesaid action of the respondents is illegal. The reason advanced was that on 23rd March 1983 forty daily wagers, many of whom juniors to the petitioners, were regularised by the respondents and their services have been terminated.

4. The respondents contested the special civil application by filing reply to the writ petition. Ms. Sangita Pahwa, learned counsel for the petitioners submitted that when persons junior to the petitioners have already been regularised in service and given regular pay-scale, the action of the respondents to take away the benefit from the petitioners is unjustified. It has next been contended that after approaching this Court by way of previous special civil application, the respondents have passed order of reinstatement of the petitioners as regular employees with the regular pay-scale of the respective posts. This decision is taken after due application of mind and taking into consideration the decision of this Court as well as the fact that juniors to the petitioners have already been regularised in service with regular pay-scale. Lastly the learned counsel for the petitioners contended that before reviewing the order dated 7-3-1994 and before bringing down the petitioners to the status of daily wagers, they should have been given an opportunity of hearing. On the other hand Ms. Mamta Vyas, learned counsel for the respondents, argues with vehemence that the respondents have committed

mistake in passing the order dated 7-3-1994. The mistake was apparent because this Court nowhere directed in the previous writ petition that the petitioners should be reinstated as regular employees in the regular pay-scale. It has next been contended that in the case of those 40 employees also the order of their regularisation has been withdrawn and they were treated to be only as daily wagers. Those 40 employees against whom decision was taken by the respondents to reduce to the status of daily wagers filed suit in civil court at Junagadh. The trial court, on their application for temporary injunction, granted interim relief in their favour. The respondents have taken the matter in appeal to the District Court by filing civil miscellaneous appeal No.655 of 1984 in which the order passed by the trial court has been stayed, and the appeal is pending. Ms. Mamta Vyas, learned counsel for the respondent contended that the petitioners were aware of all these facts and they very conveniently concealed the same from this court in the writ petition. It is a case of only correction of apparent mistake.R

the principles of natural justice were not required to be complied with.

5. I have given my thoughtful consideration to the contentions made by the learned counsel for the parties. The order which has been passed by this Court in special civil application No.6112 of 1984 is as under:

"The petition is partly allowed. The oral action of the respondent Nagar Panchayat in terminating the services of the petitioners with effect from 31st May, 1983 is hereby quashed and set aside and the respondents are directed to reinstate the petitioners herein on their original posts with continuity of service and 50 per cent backwages within six weeks from the date of receipt of writ of order of this court."

.....T.....T.....T.....T.....T.....T.....T.....T.....T.This Court directed the respondents to reinstate the petitioners on their original posts. On the day on which their services were terminated the petitioners were working as daily wagers and as such they should have been reinstated as daily wagers. There was no direction by this court that they should be reinstated as regular employees and they should be given regular pay-scale. In view of this clear direction of this court I am satisfied that the respondent has made mistake in passing the order dated 7-3-1994 to reinstate the petitioners as regular employees and giving them regular pay-scale of the posts concerned.

6. The emphasis laid by the counsel for the petitioners on the fact that the petitioners have been reinstated as regular employees for the reason that their juniors were regularised in service is of no substance. I find sufficient merit in the contention of Ms. Mamta Vyas that the petitioners tried to conceal the facts from this court. It is true that at one point of time those 40 daily wagers were regularised and they were given regular pay-scale, but that decision was reviewed by the respondents and their status has been brought to that of daily wagers. It is equally true that for some time under the stay of the civil court the aforesaid decision of the respondents was stayed. That order of the trial court has been stayed by the appellate court and that stay is continuing till now. These are relevant and material facts which should have been disclosed by the petitioners. Be that as it may. The petitioners claim discrimination on this count. They have to be reinstated as daily wagers and in case the respondents sought to rectify the mistake I do not find any illegality in the action. It is altogether a different subject matter whether the petitioners should be regularised or not or they should be given regular pay scale or not. That was not the subject matter of decision in the previous writ petition. The only challenge was to the termination of service, and this court has not given any other benefits to the petitioners except reinstatement on their original posts, which, as discussed earlier, meant status of daily wagers which they were having on the date of their termination from service. Learned counsel for the petitioners does not dispute that the respondents have brought the facts as regards the 40 employees in L.P.A. The petitioners should have fairly disclosed all the facts. None of the contentions raised by the counsel for the petitioner carry any substance. The writ petition has no substance. The order dated 30-11-1995 does not suffer from any infirmity which calls for interference by this court.

7. During the pendency of this writ petition order dated 30-11-1995 was passed and by amending the petition that order has also been challenged. But it is only, as stated, earlier, rectification of mistake, and no illegality has been committed. The order of this court has not been properly construed and those 40 employees have also been brought to the same status of daily wagers. Taking into consideration the totality of the facts of the case I do not find any case in favour of the petitioners. None of the legal or fundamental rights of the petitioners has been infringed which calls for interference by this Court. The writ petition is dismissed. Rule discharged. No order as to costs.

